

F.# 2007R00985

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

M-07 779

- - - - -X

UNITED STATES OF AMERICA

- against -

KENNETH ENG,

Defendant.

SEALED AFFIDAVIT
IN SUPPORT OF
WARRANT FOR ARREST

(18 U.S.C. § 875(c))

- - - - -X

EASTERN DISTRICT OF NEW YORK, SS:

JEFFREY D. MARKHEIM, being duly sworn, deposes and states that he is a Special Agent with the Federal Bureau of Investigation, duly appointed according to law and acting as such.

Upon information and belief, there is probable cause to believe that in or about March 2005 and April 2005, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant KENNETH ENG did transmit in interstate commerce a communication containing a threat to injure the person of another.

(Title 18, United States Code, Section 875(c)).

The source of your deponent's information and the grounds for his belief are as follows:^{1/}

^{1/} Because the purpose of this Affidavit is to state only probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware. In addition, when I rely on statements made by others, such statements are set forth

Introduction

1. I have been a Special Agent with the Federal Bureau of Investigation ("FBI") for approximately four years. Since November 2003, I have been assigned to the FBI squad that investigates violations of civil rights statutes, such as hate crimes, and other federal laws. I am familiar with the facts of this case through my participation in witness interviews, review of records, and discussions with other FBI Special Agents and officers of the New York City Police Department ("NYPD").

The Defendant

2. The defendant KENNETH ENG is a 23-year-old, American-born Chinese man who resides in Queens, New York with his parents. ENG graduated with a bachelors degree in fine arts from New York University ("NYU") in January, 2005.

3. ENG is a self-proclaimed racist who, stated, in sum and substance, that he hates whites and blacks, and that Asians should rise up against them with violence. Among other public statements:

a. As a contributing writer for a regional San Francisco newspaper, AsianWeek, ENG published several racist-themed columns, including a November 2006 article entitled, "Proof that Whites Inherently Hate Us;" a December 2006 article entitled, "Why Non-Violent Protest Will Never Help Asians;" and a

in part and in substance unless otherwise indicated.

February 2007 article entitled, "Why I Hate Blacks." When interviewed about his articles on television by Fox News on March 5, 2007, ENG confirmed that he "generally hate[s] black and white people."

b. On April 16, 2007, eight hours after the Virginia Tech shootings,^{2/} ENG posted a video on "YouTube," in which he praised and laughed about the shootings, stating, among other things, "It was the funniest thing I'd ever read in my life I'm laughing at the death of your people." He concluded the video by saying that he is glad that "32 white and black people are dead."

c. In an article about ENG published in the Village Voice on May 1, 2007, he is quoted as saying: "Frankly I was planning on going to NYU and going on a rampage . . . the only thing that stopped me was that I couldn't afford a gun."

Criminal Conduct

4. In the fall of 2003, ENG's second year at NYU, he was enrolled in an Advanced Production class. On or about September 12, 2003, during this class, ENG stated, in response to a presentation by a female African-American student, that the

² On April 16, 2007, between approximately 7:15 a.m. and 9:51 a.m., Seung-Hui Cho, a South Korean immigrant who was an English major at Virginia Tech university, shot and killed 32 people, many of them students, and wounded approximately 25 others before shooting and killing himself. The shootings took place in two locations on Virginia Tech's campus.

students should tell the "Negro" that her work was bad. The professor and several students in the class, including John Doe, an individual whose identity is known to the government, told ENG that his comments were inappropriate. Shortly thereafter, ENG was expelled from the course. In response to the expulsion, ENG sent an e-mail to the professor, stating, in part and substance: "I was recently pondering whether I should continue to think of jews [sic] as equals, but I think your actions have made up my mind. Good day."

5. On or about July 27, 2004, John Doe encountered ENG in a film editing suite at NYU. ENG entered the suite as John Doe was working on his film with another student. ENG walked up to John Doe and spit into John Doe's hair. ENG then moved closer and spit directly into John Doe's face two times. ENG called John Doe a "white pussy" and told John Doe, in substance, that he (ENG) had recently published an essay advocating militant violence against whites to protect Asian rights. ENG also accused John Doe of having sided with the African-American student during the prior classroom incident and thereby causing ENG to be expelled from the class. NYU security officers were called to accompany John Doe for his protection out of the building.

6. A few days later, on or about July 30, 2004, John Doe was again at the editing suite when he was alerted by NYU

staff that ENG was in the building. John Doe requested a security escort out of the building. As John Doe was being escorted past ENG, ENG called John Doe "white boy."

7. Almost eight months passed without any contact between ENG and John Doe. However, on or about March 25, 2005, John Doe received a call on his cellphone from ENG while John Doe was in Los Angeles, California.^{3/} During the call, ENG repeatedly said words to the effect of "Remember me? I'm the guy who spit on you."^{4/} Frightened, John Doe immediately hung up. ENG subsequently called John Doe numerous times, including calls made to John Doe while he was in Brooklyn, New York,^{5/} but John Doe did not answer these calls. After receiving these calls, John Doe decided not to attend the showing of his own film at the NYU event called "First Run," which took place on NYU's campus shortly after ENG began calling John Doe.


WHEREFORE, your deponent respectfully requests that a warrant issue for the arrest of the defendant KENNETH ENG so that he may be dealt with according to law, and that this Affidavit

³ John Doe did not know how ENG got his cellphone number.

⁴ The telephone number from which ENG made the calls corresponds to ENG's current cellphone number.

⁵ John Doe's cellphone number has a "718" prefix.

and the warrant be sealed to prevent the flight of the defendant and destruction of evidence.



JEFFREY D. MARKHEIM
Special Agent
Federal Bureau of Investigation

Sworn to before me this
5 day of July, 2007

GE
